

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL SLAY,

Plaintiff,

v.

SUPERIOR COURT OF CALIFONRIA, et al.,

Defendants.

No. 2:20-CV-1591-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's complaint, ECF No. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
3 with at least some degree of particularity overt acts by specific defendants which support the
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
5 impossible for the Court to conduct the screening required by law when the allegations are vague
6 and conclusory.

7

8 I. PLAINTIFF'S ALLEGATIONS

9 Plaintiff names the following as defendants: (1) the Superior Court of California;
10 (2) the Rio Cosumnes Correctional Center, which is a county jail; and (3) the County of
11 Sacramento. See ECF No. 1, pg. 1. Plaintiff alleges:

12 Due to the Covid-19 pandemic social distancing had not been met by CDC
13 regulations. My 6th, 8th, and 14th Amendments have been violated. My
14 anxiety and stress level is very high. TO date I have not been released and
15 I am not currently here for a violent crime. Also I have less than a year
left. It is cruel and unusual punishment to sentence me to a death sentence
especially with no mask – and being in this uncleanly environment.

16 Id. at 3.

17

18 II. DISCUSSION

19 Plaintiff fails to state any claims against the named defendants for the reasons
20 discussed below:

21 A. Eleventh Amendment Immunity

22 The Eleventh Amendment prohibits federal courts from hearing suits brought
23 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
24 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
25 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep't
26 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
27 Cir. 1989). A state's agency responsible for incarceration and correction of prisoners is a state
28 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782

1 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).

2 The Superior Court of California is an arm of the state and, as such, is not a proper
3 defendant.

4 **B. Municipal Liability**

5 Municipalities and other local government units are among those “persons” to whom §
6 1983 liability applies. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978). Counties
7 and municipal government officials are also “persons” for purposes of § 1983. See id. at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local government
8 unit, however, may not be held responsible for the acts of its employees or officials under a
9 respondeat superior theory of liability. See Bd. of County Comm’rs v. Brown, 520 U.S. 397, 403
10 (1997). Thus, municipal liability must rest on the actions of the municipality, and not of the
11 actions of its employees or officers. See id. To assert municipal liability, therefore, the plaintiff
12 must allege that the constitutional deprivation complained of resulted from a policy or custom of
13 the municipality. See id. A claim of municipal liability under § 1983 is sufficient to withstand
14 dismissal even if it is based on nothing more than bare allegations that an individual defendant’s
15 conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los Angeles
16 Police Dep’t, 839 F.2d 621, 624 (9th Cir. 1988).

17 Here, Plaintiff names two municipal defendants – the Rio Cosumnes Correctional
18 Center, which is a county jail, and the County of Sacramento. Plaintiff has not, however, alleged
19 a custom, policy, practice of either defendant which was the moving force behind the alleged
20 constitutional violation.

21
22 **III. CONCLUSION**

23 Because it is possible that the deficiencies identified in this order may be cured by
24 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire
25 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
26 informed that, as a general rule, an amended complaint supersedes the original complaint. See
27 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to

1 amend, all claims alleged in the original complaint which are not alleged in the amended
2 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
3 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make
4 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
5 complete in itself without reference to any prior pleading. See id.

6 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
7 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
8 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
9 each named defendant is involved, and must set forth some affirmative link or connection
10 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
11 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

12 Finally, Plaintiff is warned that failure to file an amended complaint within the
13 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
14 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
15 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
16 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. Plaintiff's original complaint, ECF No. 1, is dismissed with leave to
19 amend; and

20 2. Plaintiff shall file a first amended complaint within 30 days of the date of
21 service of this order.

22
23 Dated: March 23, 2021


24 DENNIS M. COTA
25 UNITED STATES MAGISTRATE JUDGE
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